



General Assembly

January Session, 2015

## ***Amendment***

LCO No. 7921



Offered by:  
SEN. FASANO, 34<sup>th</sup> Dist.

To: Senate Bill No. 23

File No. 241

Cal. No. 189

### ***"AN ACT CONCERNING GROUP-WIDE SUPERVISION FOR INTERNATIONALLY ACTIVE INSURANCE GROUPS."***

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. Section 31-293 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2015*):

5 (a) When any injury for which compensation is payable under the  
6 provisions of this chapter has been sustained under circumstances  
7 creating in a person other than an employer who has complied with  
8 the requirements of subsection (b) of section 31-284, a legal liability to  
9 pay damages for the injury, the injured employee may claim  
10 compensation under the provisions of this chapter, but the payment or  
11 award of compensation shall not affect the claim or right of action of  
12 the injured employee against such person, but the injured employee  
13 may proceed at law against such person to recover damages for the  
14 injury; and any employer or the custodian of the Second Injury Fund,

15 having paid, or having become obligated to pay, compensation under  
16 the provisions of this chapter may bring an action against such person  
17 to recover any amount that he has paid or has become obligated to pay  
18 as compensation to the injured employee. If the employee, the  
19 employer or the custodian of the Second Injury Fund brings an action  
20 against such person, he shall immediately notify the others, in writing,  
21 by personal presentation or by registered or certified mail, of the action  
22 and of the name of the court to which the writ is returnable, and the  
23 others may join as parties plaintiff in the action within thirty days after  
24 such notification, and, if the others fail to join as parties plaintiff, their  
25 right of action against such person shall abate unless the employer,  
26 insurance carrier or Second Injury Fund gives written notice of a lien in  
27 accordance with this subsection. In any case in which an employee  
28 brings an action against a party other than an employer who failed to  
29 comply with the requirements of subsection (b) of section 31-284, in  
30 accordance with the provisions of this section, and the employer is a  
31 party defendant in the action, the employer may join as a party  
32 plaintiff in the action. The bringing of any action against an employer  
33 shall not constitute notice to the employer within the meaning of this  
34 section. If the employer and the employee join as parties plaintiff in the  
35 action and any damages are recovered, the damages shall be so  
36 apportioned that the claim of the employer, as defined in this section,  
37 shall take precedence over that of the injured employee in the proceeds  
38 of the recovery, after the deduction of reasonable and necessary  
39 expenditures, including attorneys' fees, incurred by the employee in  
40 effecting the recovery. If the action has been brought by the employee,  
41 the claim of the employer shall be reduced by one-third of the amount  
42 of the benefits to be reimbursed to the employer, unless otherwise  
43 agreed upon by the parties, which reduction shall inure solely to the  
44 benefit of the employee, except that such reduction shall not apply if  
45 the reimbursement is to the state of Connecticut or a political  
46 subdivision of the state including a local public agency, as the  
47 employer, or the custodian of the Second Injury Fund. The rendition of  
48 a judgment in favor of the employee or the employer against the party  
49 shall not terminate the employer's obligation to make further

50 compensation which the commissioner thereafter deems payable to the  
51 injured employee. If the damages, after deducting the employee's  
52 expenses as provided in this subsection, are more than sufficient to  
53 reimburse the employer, damages shall be assessed in his favor in a  
54 sum sufficient to reimburse him for his claim, and the excess shall be  
55 assessed in favor of the injured employee. No compromise with the  
56 person by either the employer or the employee shall be binding upon  
57 or affect the rights of the other, unless assented to by him. For the  
58 purposes of this section, the claim of the employer shall consist of (1)  
59 the amount of any compensation which he has paid on account of the  
60 injury which is the subject of the suit, and (2) an amount equal to the  
61 present worth of any probable future payments which he has by award  
62 become obligated to pay on account of the injury. The word  
63 "compensation", as used in this section, shall be construed to include  
64 incapacity payments to an injured employee, payments to the  
65 dependents of a deceased employee, sums paid out for surgical,  
66 medical and hospital services to an injured employee, the burial fee  
67 provided by subdivision (1) of subsection (a) of section 31-306,  
68 payments made under the provisions of sections 31-312 and 31-313,  
69 and payments made under the provisions of section 31-284b in the case  
70 of an action brought under this section by the employer or an action  
71 brought under this section by the employee in which the employee has  
72 alleged and been awarded such payments as damages. Each employee  
73 who brings an action against a party in accordance with the provisions  
74 of this subsection shall include in his complaint (A) the amount of any  
75 compensation paid by the employer or the Second Injury Fund on  
76 account of the injury which is the subject of the suit, and (B) the  
77 amount equal to the present worth of any probable future payments  
78 which the employer or the Second Injury Fund has, by award, become  
79 obligated to pay on account of the injury. Notwithstanding the  
80 provisions of this subsection, when any injury for which compensation  
81 is payable under the provisions of this chapter has been sustained  
82 under circumstances creating in a person other than an employer who  
83 has complied with the requirements of subsection (b) of section 31-284,  
84 a legal liability to pay damages for the injury and the injured employee

85 has received compensation for the injury from such employer, its  
86 workers' compensation insurance carrier or the Second Injury Fund  
87 pursuant to the provisions of this chapter, the employer, insurance  
88 carrier or Second Injury Fund shall have a lien upon any judgment  
89 received by the employee against the party or any settlement received  
90 by the employee from the party, provided the employer, insurance  
91 carrier or Second Injury Fund shall give written notice of the lien to the  
92 party prior to such judgment or settlement.

93 (b) (1) When an injury for which compensation is payable under the  
94 provisions of this chapter is determined to be the result of a motor  
95 vehicle accident or other accident or circumstance in which a third  
96 person other than the employer was negligent and the claim is  
97 subrogated by the employer or its workers' compensation insurance  
98 carrier, the insurance carrier shall provide a rate adjustment to the  
99 employer's workers' compensation policy to reflect the recovery of any  
100 compensation paid by the insurance carrier prior to subrogation.

101 (2) No insurance carrier shall cancel or nonrenew an employer's  
102 workers' compensation policy or increase the rate for such policy if the  
103 cancellation, nonrenewal or increase is based on a claim under  
104 subsection (a) of this section that was reduced by one-third pursuant to  
105 said subsection (a).

106 (c) Notwithstanding the provisions of subsection (a) of this section,  
107 no construction design professional who is retained to perform  
108 professional services on a construction project, or any employee of a  
109 construction design professional who is assisting or representing the  
110 construction design professional in the performance of professional  
111 services on the site of the construction project, shall be liable for any  
112 injury on the construction project for which compensation is payable  
113 under the provisions of this chapter, unless responsibility for safety  
114 practices is specifically assumed by contract. The immunity provided  
115 by this subsection to any construction design professional shall not  
116 apply to the negligent preparation of design plans or specifications.  
117 For the purposes of this subsection "construction design professional"

118 means (1) any person licensed as an architect under the provisions of  
119 chapter 390, (2) any person licensed, or exempted from licensure, as an  
120 engineer under the provisions of chapter 391, or (3) any corporation  
121 organized to render professional services through the practice of either  
122 or both of such professions in this state.

123 (d) Notwithstanding the provisions of subsection (a) of this section,  
124 the furnishing of or the failure to furnish safety inspections or safety  
125 advisory services (1) by an insurer incident to providing workers'  
126 compensation insurance to an employer, (2) pursuant to a contract  
127 providing for safety inspections or safety advisory services between an  
128 employer and a self-insurance service organization incident to  
129 providing workers' compensation related services or (3) by a union  
130 representing employees of the employer, shall not subject the insurer  
131 or self-insurance service organization or their agents or employees, or  
132 the union, its members or the members of its safety committee, to third  
133 party liability for damages for injury, death or loss resulting therefrom  
134 unless the liability arises from a breach of a duty of fair representation  
135 of its members by a union. The immunity from liability extended  
136 under this subsection shall not be extended to any insurer or self-  
137 insurance service organization other than where the immunity is  
138 incident to the provision of workers' compensation insurance or  
139 workers' compensation related services."

This act shall take effect as follows and shall amend the following sections:		
---	--	--

Sec. 501	<i>October 1, 2015</i>	31-293
----------	------------------------	--------